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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/716,223 11/22/96 VAN SCHOUWENBURG G 961170

IM62/0527

RICHARD L BYRNE  
700 KOPPERS BUILDING  
436 SEVENTH AVENUE  
PITTSBURGH PA 15219-1818

EXAMINER

SHERRER, C

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

05/27/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**08/716,223**

Applicant(s)  
**Schouwenburg**

Examiner  
**Curtis E. Sherrer**

Group Art Unit  
**1761**



☒ Responsive to communication(s) filed on Mar 17, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1, 3, 4, 9-12, and 14-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 3, 4, 9-12, and 14-20 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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### Part III DETAILED ACTION

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 3, 4, 7, 9-12 and 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. The scope and meaning of the claim term "extrudate" (as a verb) is unclear.
4. It is unclear how Claim 7 further limits Claim 1.
5. The phrases "light pressure" and "thin layer" of Claim 17 are of unknown scope and meaning.

#### *Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 1, 3, 4, 7, 12, 14-15, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Rombauer et al (The Joy of Cooking, pages 812-13).

8. The Joy of Cooking teaches the production of sausages whereby lean pork and beef are cut into cubes, cured in a brine, dried, cut, mixed with fat, salt, seasonings and wine, stuffed and cured. The wine inherently contains tartaric, malic and other acids. While the cited recipe does not mention that the variously claimed characteristics and effects of the salt and acid, they are inherently present in the disclosed sausage as the process is identical to that which is claimed. Further, because the pH of wine is typically in the range of 3 to 3.5, there will be a decrease in the pH of the meat of at least 1.0 units.

It is noted that the Office does not have the facilities for examining and comparing Applicant's products with the products of the prior art in order to establish that the product of the prior art does not possess the same material structural and functional characteristics of the claimed process. In the absence of evidence to the contrary, the burden is upon the applicant to prove that the claimed processes are functionally different than those taught by the prior art and to establish patentable differences. See *In re Best*, 562 F.2d 1252, 195 U.S.P.Q. 430 (CCPA 1977); *Ex parte Gray*, 10 U.S.P.Q.2d 1922, 1923 (BPAI).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3, 4, 7, and 9-12 and 14-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Weiner (U.S. Pat. No. 3,740,235) in view of Bauer et al. (Abstract of German Pat. No. 1,692,110) for the reasons set forth in the last Office Action.

### ***Response to Arguments***

11. Applicant's arguments filed 12/17/98 have been fully considered but they are not persuasive.

12. It is first noted that the rejection in further view of Gould has been dropped due to the fact that it was relied on merely to show the notoriously well known use of a rotating drum. As this limitation is no longer found in the claims, reliance on Gould is no longer necessary. Therefore, any arguments directed to the teachings of Gould will not be addressed.

13. Applicant asserts that Bauer et al does not suggest adding an acid to denature and coagulate salt solubilized proteins since the acid addition therein is for a completely different purpose." Applicant does not then provide what purpose the acids are added. That is because

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the cited reference is silent as to why they are added. Said reference merely calls them "cutter additives.

14. Weiner et al teaches that "[o]ther optional ingredients include various phosphate compounds known in the art. Such phosphates tend to aid in the extraction of protein for binding purposes and further tend to restore the meat in the finished product to a condition approaching the immediate post mortem condition of the meat." (Col. 4, lines 10-15). These would be the same phosphates as referred to in the secondary reference, i.e., Bauer et al. Those in the art would add the ingredients of Bauer et al, including acids, which it can be inferred are equivalents to the phosphates (as the phosphates and acids are not disclosed as being used in combination with one another). As such, an express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

15. Lastly, again, it is respectfully considered that *In re Levin* (cited in previous Office Actions) provides the rationale for adding various old and well known food ingredients in new combinations. Therefore, the rejection stands and it is considered that said rejection presents a *prima facie* case of obviousness.

16. It is noted, and Applicant acknowledges, that the compete Bauer et al disclosure was not provided in the After Final Amendment. It is requested, for the sake of a complete record, that Applicant submit the full disclosure.

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*Conclusion*

17. No claim is allowed.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The fax phone number for this Group is (703)-305-3602.

20. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

A handwritten signature in black ink, appearing to read 'Curtis E. Sherrer', with a long horizontal flourish extending to the right.

Curtis E. Sherrer

May 26, 1999